IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.550 OF 2004
IN
SUMMARY SUIT NO.1538 OF 2004

Joglekar Refractories and
Ceramics P.Ltd. .. Plaintiffs

Vs.

Mr. Hem Desai and Anr. .. Defendants

Mr.Sanjay Jain with Ms.Sayed Rukhsana i/b Vinod Mistry and Co. for the plaintiffs

Mr.K.K.Shroff i/b Singhi and Co. for defendant no.1 in support of Chamber Summons.

CORAM : S.U.KAMDAR, J
DATED : 31ST AUGUST, 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.28,95,339.55. The claim in the present suit arises in respect of goods sold and delivered. It is the case of the plaintiffs that under the agreement dt.24.8.93 defendants were appointed as agent and pursuant to the orders placed they have been supplying the goods under each of the invoices and delivery challans which are annexed as Ex.A to the Plaint

2. The learned counsel for the defendants has defended the present suit by firstly contending that the suit is not maintainable as summary suit as the agreement at Exh. A does not provide for liquidated sum. However, in my opinion, the suit is maintainable because the same is based on each of the invoices cum delivery challans in respect of goods sold and delivered by the plaintiffs to the defendants.

3. The second contention by the learned counsel for the defendants is that the goods were defective. On perusal of the record I find that the so-called complaint of defective goods has been raised only after termination of agreement by letter dt.1.11.03 by the plaintiffs and even in respect of the said complaint there are only vague averments. Apart from the aforesaid I also find that the goods are taken and consumed and are not returned by the defendants to the plaintiffs and thus, the claim for defective material is baseless and belated.

4. The third contention raised by the learned counsel for the defendants is that there is also a dispute as to the entitlement of commission because under Clause 6 of the Agreement defendants were entitled to commission also in respect of the goods which are directly sold in Gujarat. According to the defendants the plaintiffs must give account in respect of the goods directly sold by him in Gujarat. In my opinion, there is no substance in the third contention also because the defendants have not given any particulars of goods sold by the plaintiffs directly in the State of Gujarat nor the defendants have given any particulars of the amount of commission they claim to be entitled to. Defendants are required to furnish details in respect of such sale of the goods by the plaintiffs directly and only thereafter they are entitled to claim pursuant to clause 6 of the agreement. No such details has been furnished. In the aforesaid view, there is no defence in the present suit.

5. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendant to deposit a sum of Rs.25 lacs within 8

weeks from today. failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.